

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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JAMES C. KISTNER,

Plaintiff,

v.

CITY OF BUFFALO, et al.,

Defendants.

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**ANSWER TO THIRD
AMENDED COMPLAINT**

Case No. 18-cv-402-LJV-JJM

Trial by Jury Demanded

Defendants, by their undersigned attorney, for their answer to plaintiff's third amended complaint, upon information and belief allege:

1. Deny the allegations in paragraphs 1, 2, 4, 6, 7, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 22, 25, 26, 27, 28, 29, 48, 49, 50, 51, 52, 53, 77, 78, 87, 91, 102, 103, 104, 109, 132, 133, 134, 139, 140, 147, 149, 150, 151, 152, 160, 171, 173, 174, 178, 179, 181, 182, 184, 185, 186, 191, 192, 193, 194, 195, 196, 197, 199, 200, 201, 202, 203, 204, 205, 206, 208, 210, 211, 212, 213, 214, 216, 217, 219, 220, 221, 223, 224, 225, 227, 228, 229, 230, 232, 233, 234, 235, 237, 239, 240, 241, 243, 246, 247, 251, 252, 253, 255, 256, 257, 258, 259, 260, 261, 263, 264, 265, 266, 268 and 270.

2. Lack knowledge or information sufficient to admit or deny the allegations in paragraphs 3, 5, 8, 16, 17, 21, 23, 24, 30, 31, 32, 33, 34, 36, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 79, 80, 81, 82, 83, 84, 85, 86, 88, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 105, 106, 107, 108, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 135, 136, 137, 138, 141, 142, 143, 144, 145, 146, 148, 153, 159, 161, 164, 165, 166, 167, 168, 169, 172, 175, 176, 177, 183, 188, 189, 190, 209, 218, 238, 242, 245, 249 and 250.

3. Admit the allegations in paragraphs 35, 163 and 271.

4. Answering paragraph 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47, admit that the defendants were or are employed by the City of Buffalo in the Police Department, and lack knowledge or information sufficient to admit or deny the rest of the allegations.

5. Answering paragraphs 154, 155, 156, 157 and 158, state that the charges attached to the complaint as exhibits B & C speak for themselves.

6. Answering paragraph 162, admit that on or about March 31, 2017, plaintiff delivered a notice of claim to the City of Buffalo Department of Law, and lack knowledge or information sufficient to admit or deny the rest of the allegations.

7. Repeat and reallege the answers to the allegations in paragraphs 170, 180, 187, 198, 207, 215, 222, 226, 231, 236, 244, 248, 254, 262, 267 and 269.

8. Deny each and every allegation of the complaint not specifically answered herein.

FIRST DEFENSE

9. Plaintiff fails to state a claim upon which relief can be granted.

SECOND DEFENSE

10. Plaintiff's claims are barred by the applicable statutes of limitations.

THIRD DEFENSE

11. Plaintiff's claims are barred by the doctrine of qualified immunity.

FOURTH DEFENSE

12. Plaintiff's claims are barred by the doctrine of governmental function immunity.

FIFTH DEFENSE

13. Plaintiff's claims are barred by the existence of probable cause or reasonable suspicion, or by arguable probable cause or arguable reasonable suspicion.

SIXTH DEFENSE

14. Plaintiff's claims are barred by the doctrines of res judicata or collateral estoppel.

SEVENTH DEFENSE

15. Plaintiff failed to mitigate his alleged damages.

EIGHTH DEFENSE

16. Any contact with or force used against plaintiff was justified and privileged.

NINTH DEFENSE

17. Plaintiff's damages, if any, must be reduced in proportion to his comparative fault and assumption of the risk.

TENTH DEFENSE

18. Plaintiff's damages, if any, must be offset by the amounts received from collateral sources.

ELEVENTH DEFENSE

19. Plaintiff failed to join necessary parties.

TWELFTH DEFENSE

20. Plaintiff's damages, if any, are attributable to the conduct of others, and plaintiff's recovery from defendants, if any, should be limited to those damages actually caused by defendants' conduct.

THIRTEENTH DEFENSE

21. The defendants will claim NY CPLR Article 16's limitations on joint and several tort liability, if applicable.

FOURTEENTH DEFENSE

22. The defendants will claim an offset in accordance with NY GOL §15-108, if applicable.

FIFTEENTH DEFENSE

23. Defendants' alleged defamatory statements were true.

PRAYER FOR RELIEF

WHEREFORE, defendants demand judgment be entered against plaintiff, dismissing the third amended complaint in its entirety, with prejudice, granting defendants their costs, including attorney's fees, and granting defendants such other and further relief as the court deems just and proper.

Dated: Buffalo, New York
January 5, 2023

Yours, etc.,

Cavette A. Chambers
Corporation Counsel
Attorney for Defendants

By: s/David M. Lee
Assistant Corporation Counsel
City of Buffalo Department of Law
65 Niagara Square, 1104 City Hall
Buffalo, New York 14202
(716) 851-9691
dlee@city-buffalo.com

To: R. Anthony Rupp III, Esq.
Chad A. Davenport, Esq.
Rupp Baase Pfalzgraf Cunningham LLC
Attorneys for Plaintiff
1600 Liberty Building
Buffalo, New York 14202
(716) 854-3400